

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

NATIONAL BOARD OF MEDICAL)	
EXAMINERS <i>et al.</i> ,)	
)	
Plaintiffs,)	
v.)	Civil Action No. 09-1043-JDB
)	
OPTIMA UNIVERSITY LLC <i>et al.</i> ,)	
)	
Defendants.)	

NOTICE OF FILING

EXHIBIT A

DJG/2008R00302

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No.
v. :
EIHAB SULIMAN and : Title 18, United States Code,
EGIJA KUKA : §§ 1341, 1343, 1349 & 2
:

I N D I C T M E N T

The Grand Jury in and for the District of New Jersey,
sitting at Newark, charges:

COUNT ONE

(Conspiracy to Commit Mail and Wire Fraud)

1. At all times relevant to this Indictment:

a. Optima University was a New Jersey company with its principal place of business located in Totowa, New Jersey. Optima University was a test preparation business that provided courses designed to prepare students for the United States Medical Licensing Examination (hereinafter "USMLE") examination.

b. Defendant EIHAB SULIMAN was a resident of the state of New Jersey and an owner of Optima University.

c. Defendant EGIJA KUKA was a resident of the state of New Jersey, married to defendant SULIMAN and an owner of Optima University.

d. The Educational Commission for Foreign Medical Graduates (hereinafter "ECFMG") is a private, nonprofit organization. Through its program of certification, the ECFMG assesses whether international medical graduates are ready to enter residency or fellowship programs in the United States that are accredited by the Accreditation Council for Graduate Medical Evaluation. The ECFMG participates in the USMLE through a contract with the program's parent organizations, the Federation of State Medical Boards (hereinafter "FSMB"), a national nonprofit organization representing the 70 medical and osteopathic boards of the United States and its territories, and the National Board of Medical Examiners (hereinafter "NBME").

e. The NBME is an independent, not-for-profit organization, headquartered in Philadelphia, Pennsylvania, that provided examinations for health professionals. Among the tests that NBME administers is the USMLE, a three-part examination used by medical licensing authorities in the United States to evaluate physicians for initial licensure in the United States. The USMLE assesses an examinee's ability to apply knowledge, concepts, and principles, and to demonstrate fundamental patient-centered skills. Medical school graduates - whether they graduated from a United States medical school or a foreign medical school - cannot generally enter into residency training or get a medical license without successful completion of all or some parts of the USMLE.

f. The USMLE is given in three parts or "Steps."

Step 1 is a multiple-choice test that assesses whether examinees understand and can apply important concepts of the sciences basic to the practice of medicine. Step 2 is given in two parts, Clinical Knowledge and Clinical Skills, which assess whether examinees can apply medical knowledge, skills and understanding of clinical science essential for provision of patient care under supervision. Step 2 (Clinical Knowledge) is a multiple-choice test that focuses on the principles of clinical science important for the practice of medicine under supervision in postgraduate training. Step 2 (Clinical Skills) uses standardized patients to test examinees on their ability to gather information from patients, perform physical examinations, and communicate their findings via "patient notes" that are submitted for review. Finally, Step 3 of the USMLE includes multiple-choice test items and computer-based case simulations that require the examinee to apply medical knowledge and understanding of biomedical and clinical science essential for the unsupervised practice of medicine, with emphasis on patient management in ambulatory settings.

g. The multiple-choice examinations - Steps 1, 2 (Clinical Knowledge), and 3-are given on computer. The questions may include only text or may include figures or diagrams. For each multiple-choice question, examinees are given several possible answers, each of which corresponds to a particular letter (e.g., A, B, C, D, or E). Examinees answer based upon the letter which they think corresponds to the best answer. After an examinee takes one of the multiple-choice exams, the computer records the examinee's answers and then transmits them to NBME for scoring. After the scoring is completed, examinees are sent their scores.

h. In total, the various Steps of the USMLE are given numerous times year-round, at various test centers in the United States and around the world. Among other foreign locales, there are test centers in Milan, Italy, and Budapest, Hungary. NBME has a contract with a testing service that provides scheduling and test centers for the computer-based components of the USMLE.

i. The NBME takes great effort to maintain the security and confidentiality of the test materials for the USMLE. Before multiple-choice questions are included on the USMLE, the questions go through an intensive committee drafting and review process. The committees that are responsible for preparing the examination are made up of medical educators, clinicians, and scientists. All committee members who write, review and/or

approve questions must sign confidentiality agreements regarding the content of the questions. In addition, all USMLE test materials are stored in restricted-access areas.

j. The USMLE examinations that are given on a particular test date are also created in such a way as to ensure security. NBME maintains a very large pool of test questions that can be used on the USMLE. For the computer-based USMLE examinations, Steps 1, 2 (Clinical Knowledge), and 3, there can be more than 5,000 possible approved questions available for use in examinations at any one time. In addition, there are dozens of different sets of test questions that can be administered to examinees. The sets are randomly selected on the day of a test and, within each test set, the questions are presented randomly. Before each exam, the exam materials are encrypted and sent to the testing centers using proprietary software developed by NBME. All test centers have proctors and video surveillance during the examinations for additional security.

k. In their individual applications to take the USMLE, examinees are required to submit photographs of themselves and to sign statements certifying that they have read the USMLE Bulletin of Information, are familiar with its contents, and agree to abide by the policies and procedures described therein before sitting for the USMLE. The USMLE Bulletin contains the "Rules of Conduct" for the USMLE. Among other things, the Rules

of Conduct advise examinees that they may not reproduce or disseminate any content of the USMLE examination. Examinees are also not permitted to have any personal items, such as pens, paper, notes, or electronic devices during the examinations, nor are examinees allowed to bring anything in or out of the secure test centers. The USMLE Bulletin also informs applicants that all of the examination materials used in the USMLE are copyrighted and that any unauthorized distribution or reproduction, including by memorizing and reconstructing the questions, is prohibited. In addition, before an examinee begins a computer-based portion of the USMLE, a notice appears on the computer screen which states, among other things:

The purpose of this screen is to remind you of the Rules of Conduct that you agreed to follow when you registered to take the USMLE.

1. You are the person named on the Scheduling Permit for the examination.
2. You will not give, receive, or obtain any form of unauthorized assistance during the examination or during breaks.
3. You will not have in your possession any formulas, study materials, notes, papers, or electronic devices unless you are out of the examination room on a break between blocks of the examination.
4. Before entering the testing room, you will place any formulas, study materials, notes or paper in your possession in a locker. All personal belongings, including cellular telephones, your purse and/or wallet, pagers, and personal digital assistants (PDAS) must also be placed in a locker before you enter the testing room.

5. You will not leave your testing station for breaks unless the break screen is visible on your monitor. It will be considered a violation of the Rules of Conduct if you indicate on the center log that your break screen is visible when it is not.

6. You will not use a telephone or other communication device at any point during the examination, including breaks, for any purpose related to test content.

7. You will not remove materials in any form (written, printed, recorded, or any other type) from the test center.

8. All examination materials remain the property of the USMLE parent organizations, and you will maintain the confidentiality of the materials... including multiple choice items . . . You will not reproduce or attempt to reproduce examination materials through memorization or any other means. Also, you will not provide information relating to examination content that may give or attempt to give unfair advantage to individuals who may be taking the examination. This includes posting regarding examination items and/or answers on the Internet.

1. As an additional security measure, NBME staff also review the results of USMLE exams and investigate unusual test patterns and odd performance results. Such test patterns include unusually low scores and unusual response patterns such as a disproportionate number of string responses (e.g., 85% of "A" answers on a multiple-choice exam that has answer choices of "A, B, C, D, or E").

2. From at least as early as in or about December 2007 through on or about May 28, 2008, in Passaic County, in the District of New Jersey and elsewhere, defendants

**BIHAB SULIMAN and
EGIJA KUKA**

did knowingly and intentionally conspire and agree with each other and others to devise a scheme and artifice to defraud NBME, and to obtain money and property, namely, proprietary test questions owned by NBME, by means of materially false and fraudulent pretenses, representations, and promises, and, for the purpose of executing and attempting to execute such scheme and artifice, to:

- i. Cause any matter to be placed in a post office or authorized depository for mail, or to be placed with a private or commercial interstate carrier, to be sent or delivered by the Postal Service or private or commercial interstate carrier, and to be taken or received from the Postal Service or private or commercial interstate carrier, contrary to Title 18, United States Code, Section 1341; and
- ii. Cause to be transmitted by means of wire communications in interstate and foreign commerce certain writings, signs, signals, and pictures, contrary to Title 18, United States Code, Section 1343.

The Object of the Conspiracy

3. The principal object of the conspiracy was for defendants EI HAB SULIMAN and EGIJA KUKA to fraudulently represent that defendant KUKA was a foreign-trained medical doctor so that defendant KUKA could take the USMLE examination and thereby gain access to, steal, and reproduce without authorization the NBME live test questions. The live test questions were then utilized by defendants SULIMAN and KUKA at Optima University on practice examinations provided to Optima University students, in order to induce students to enroll in the USMLE preparation course at Optima University.

The Means and Methods of the Scheme to Defraud

4. In furtherance of this scheme and to effect its objects defendants EI HAB SULIMAN and EGIJA KUKA, and others, employed various means and methods, including those set forth below.

5. Beginning in or around December 2007, defendants EI HAB SULIMAN and EGIJA KUKA, and others, solicited potential Optima University students by representing that, if the students enrolled at Optima University, they would be guaranteed a passing score on the USMLE examination, even if the student had taken the USMLE examination before and failed.

6. Defendant EIHAB SULIMAN and others further represented to potential students, both orally and in writing, that any tuition paid to Optima University would be "risk-free," and that Optima University would guarantee a passing grade on the USMLE examination or the student could retake the Optima course at no additional cost to the student.

7. Defendant EIHAB SULIMAN and others falsely represented to potential students that Optima University had a long track record of helping Optima students to pass the USMLE exam.

8. On or about December 2, 2007, defendant EGIJA KUKA created an on-line application to take both USMLE Step 1 and Step 2 at a testing center located in the "Middle East Region." The information submitted by defendant KUKA falsely stated to ECFMG that she had graduated from the University of Oradea, an accredited medical school in Romania, with a Doctorate in Medicine degree.

9. On or about December 18, 2007, defendant EGIJA KUKA submitted to the ECFMG an ECFMG Form 186 "Certification of Identification Form" along with a copy of a fabricated University of Oradea medical degree via U.S. mail and overnight carrier.

10. On or about December 28, 2007, the ECFMG mailed a letter to defendant EGIJA KUKA rejecting her application to take the USMLE Step 1 and Step 2. Defendant KUKA's application was rejected because the fabricated diploma was not in English.

11. On or about January 14, 2008, an on-line request was made to change defendant EGIJA KUKA's USMLE Step 1 and Step 2 testing site location from the "Middle East Region" to the "Europe Region."

12. On or about January 15, 2008, defendant EGIJA KUKA submitted a fabricated University of Oradea diploma to the ECFMG that had been translated into English. Defendant KUKA submitted the fabricated documents via regular mail on January 15, 2008.

13. On or about March 7, 2008, defendant EGIJA KUKA made an on-line credit card payment to the ECFMG in the amount of \$65.00 to pay for the increased price of changing her USMLE Step 1 and Step 2 test location to the "Europe Region" from the "Middle East Region."

14. On or about March 7, 2008, defendant EGIJA KUKA faxed a letter to the ECFMG requesting her testing site be changed from the Middle East testing region to the Europe testing region.

15. On or about March 22, 2008, defendant EI HAB SULIMAN caused to be purchased, in his name and in the name of defendant EGIJA KUKA, two round-trip tickets from Newark Liberty

International Airport to Milan, Italy, using an American Express credit card (hereinafter "the AmEx Card").

16. On or about April 5, 2008, defendants EIHAB SULIMAN and EGIJA KUKA traveled together to Milan, Italy from Newark Liberty International Airport.

17. On or about April 7, 2008, defendant EGIJA KUKA took Step 1 of the USMLE examination in Milan, Italy. Video surveillance of defendant KUKA's test session shows defendant KUKA using a small digital video recording device to record the USMLE test questions as they appear on the computer monitor.

18. On or about April 14, 2008, defendant EGIJA KUKA took Step 2 of the USMLE examination in Milan, Italy. Video surveillance of defendant KUKA's test session shows defendant KUKA using a small digital video recording device to record the USMLE test questions as they appear on the computer monitor.

19. On or about May 20, 2008, defendant EIHAB SULIMAN caused to be purchased, in his name and in the name of defendant EGIJA KUKA, two round trip tickets from Newark Liberty International Airport to Munich, Germany using the AmEx Card.

20. On or about May 26, 2008, defendants EIHAB SULIMAN and EGIJA KUKA traveled together from Newark Liberty International Airport to Munich, Germany.

21. On or about May 28, 2008, defendant EGIJA KUKA took Step 1 of the USMLE examination in Milan, Italy.

In violation of Title 18, United States Code, Section 1349.

COUNTS TWO THROUGH SIX
(Mail and Wire Fraud)

1. The allegations set forth in paragraphs 1 and 4 through 21 of Count One are repeated as though set forth herein.

2. On or about the dates set forth below, in Passaic County, in the District of New Jersey and elsewhere, having devised and intending to devise a scheme and artifice to defraud NBME, and to obtain money and property from NBME by means of materially false and fraudulent pretenses, representations, and promises, defendants

EIHAB SULIMAN and
EGIJA KUKA,

for the purpose of executing and attempting to execute the scheme and artifice, did knowingly and intentionally place and cause to be placed in a post office and authorized depository for mail matter, and with a private or commercial interstate carrier, to be sent or delivered by the Postal Service and private or commercial interstate carrier, and to be taken or received from the Postal Service and private or commercial interstate carrier, as described below, and transmit

and cause to be transmitted by means of wire communications in interstate commerce certain writings, signs, signals, pictures and sounds, as described below:

<u>COUNT</u>	<u>APPROX DATE</u>	<u>MAIL OR WIRE</u>	<u>DESCRIPTION</u>
2	12/18/07	Mail	Envelope containing signed Form -186 sent by U.S. mail and overnight carrier to the ECFMG in Philadelphia, Pennsylvania
3	1/18/08	Mail	Envelope containing English translation of defendant EGIJA KUKA's medical diploma sent to the ECFMG in Philadelphia, Pennsylvania
4	3/8/08	Wire	Credit Card payment from a Bank of America account XXXXXXXXXXXX 0198, in the name of defendant EGIJA KUKA from Totowa, NJ, to the ECFMG located in Philadelphia, Pennsylvania in the amount of \$65
5	3/7/08	Wire	Facsimile sent from Totowa, NJ to the ECFMG in Philadelphia, Pennsylvania, changing the place where USMLE exam would be taken

6

5/7/08


Wire

Credit card payment from
a Macy's VISA account
XXXXXXXXXXXX 7209, in the
name of defendant EGIJA
KUKA, to the ECFMG in
Philadelphia,
Pennsylvania in the
amount of \$1,730

In violation of Title 18, United States Code, Sections 1341
and 1343 and Section 2.

A TRUE BILL

FOREPERSON


Paul J. Fishman
United States Attorney

CASE NUMBER: 2008R00302

United States District Court
District of New Jersey

UNITED STATES OF AMERICA

v.

EIHAB SULIMAN and EGIJA KUKA

INDICTMENT FOR

18 U.S.C. §§ 1341, 1343, 1349 & 2

A True Bill,

Foreperson

PAUL J. FISHMAN
UNITED STATES ATTORNEY
NEWARK, NEW JERSEY

DEBORAH J. GANNETT
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